

Paper files transferred to Archives? ☐ Yes

case report

AG #L18-1-04621

Closed Case

Scott Huminski v. State of Florida

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venue

Current court: 2nd DCA State  
Court number: ~~2D18-1512~~  
Originating county: Lee

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staffing

Lead counsel: John Salgado  
Unit: Criminal Appeals  
Location: Tampa

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synopsis

Category:  
Major issues: Criminal Other Final  
Constitutional issue: None  
Challenged statute:  
General keywords:

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case history

Year case opened: 2018  
Database entry: 04/20/2018  
State's most recent activity:  
Nature of most recent activity:

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Additional case numbers

Lower court number: 17-CA-421

Contract number:

LOA number:

---

Other representation

AG attorneys previously  
assigned to this case:  
Opposing counsel category: Pro Se  
Opposing counsel name(s):  
DC. Number:  
Aliases:  
Other counsel in case:  
Prosecutor:  
Contact Number:

# Special comments

- 04/10/18--Pro Se- Memorandum in support of motion to stay conviction sentence-the county court lacked jurisdiction which resided with the circuit court-mm
- 04/10/18-Pro Se- Motion to stay conviction/sentencing in court below-stripped of defense counsel-mm
- 04/10/18-Pro Se- Motion to assign criminal defense appellate counsel-mm
- 04/11/18-Pro Se- Memorandum in support of motion to stay conviction sentence-the county court lacked jurisdiction which resided with the circuit court-mm
- 04/12/18-Pro Se- Memorandum in support of motion to appoint counsel and consolidate-mm
- 04/18/18-Pro Se- Motion to assign docket number to this appeal from conviction and sentencing-mm
- 04/19/18-Pro Se- Motion to Assign Criminal Defense Appellate Counsel-mm
- 04/20/18-Pro Se-Notice of Filing-notice of orders under appeal-mm
- ✓ 04/20/18-Court Order-Appellant's "motion to assign docket number to this appeal from conviction and sentencing" is denied as moot.-mm
- ✓ 04/20/18-Court Order-Appellant's motion to correct caption and to docket filings in this appeal is granted.-mm
- 04/20/18-Pro Se-Motion to waive filing fee, appellant is indigent and memo in support of assignment of counsel-mm
- 04/20/18-Pro se-Supplement to motion to waive filing fee, appellant id indigent and memo in support of assignment of counsel-mm
- 05/02/18 Motion to reconsider or for rehearing to allow Assistance of counsel and re transfer to 20th circuit. mw
- 05/05/18 Motion to transmit order to Lee County 20th circuit court mw
- ✓ 05/04/18-Court Order-Appellant's motion for rehearing is denied.-mm
- 05/07/18-Motion to transmit order of transfer to the 20th circuit-mm
- 05/08/18-Lee County Clerk Memo of new case number and judge assigned this case as it was transferred to lee county from the dca on order dated 04/27/18-mm
- ✓ 05/15/18-Court Order-Appellant's motion to transmit order of transfer is denied.-mm
- ✓ 07/03/18-Court Order-The appellant's motion to vacate order transferring case is stricken as unauthorized. This case is closed. Further motions filed in this case will be subject to being stricken without further notice.-mm

Location of File:

Victim information

*Caution: The following victim information may be confidential under Florida law.*

## Case docket

- 04/06/2018 Oppn. ~~~~1. NOTICE OF APPEAL
- 04/19/2018 Oppn. ~~~~2. NOTICE OF APPEAL (Amended)
- 04/19/2018 Oppn. ~~~~3. MOTION TO STAY PROCEEDINGS/BRIEFING (Motion to Stay Conviction sentencing in Court below double jeopardy)
- 04/19/2018 Oppn. ~~~~4. MOTION TO CONSOLIDATE (MOTION TO TRANSFER AND/OR CONSOLIDATE INTERLOCUTORY APPEAL WITH THIS APPEAL FROM FINAL JUDGMENT (filed on 04/10/18, rec'd 4/19/18))
- 04/19/2018 Oppn. ~~~~5. MOTION TO STAY PROCEEDINGS/BRIEFING (Motion to stay conviction/sentencing pending appeal final judgment issued while interlocutory appeal pending)
- 04/19/2018 Oppn. ~~~~6. MOTION TO STAY PROCEEDINGS/BRIEFING (Motion to stay conviction/sentencing pending appeal illegal contact prohibition)
- ✓ 04/20/2018 Court ~~~~7. ORDER TO SHOW CAUSE OPPONENT (10 days)

04/20/2018 Oppn. ~~~~8. MOTION TO STAY PROCEEDINGS/BRIEFING (EMERGENCY MOTION TO STAY CONVICTION / SENTENCE, NONCOMPLIANCE WITH 3.840(f))

04/20/2018 Oppn. ~~~~9 MOTION TO APPOINT COUNSEL (and consolidate)

✓ 04/23/2018 Court ~~~10. ORDER TO SHOW CAUSE OPPONENT (within 15 days, show why case should not be trfr'd to 20th Jud. Cir.)

04/23/2018 Oppn. ~~~11. NOTICE OF APPEAL (Amended Notice re indirect criminal contempt)

04/23/2018 Oppn. ~~~12. RESPONSE TO ORDER TO SHOW CAUSE STATE

04/25/2018 Oppn. ~~~13. RESPONSE TO OTHER (Memo is support of appointment of counsel for additional reply to pending order to show cause)

04/26/2018 Oppn. ~~~14. RESPONSE TO OTHER (Supplemental reply in support of appointment of counsel for additional reply to pending order to show cause)

04/26/2018 Oppn. ~~~15. RESPONSE TO OTHER (Memo of Law Re: Counsel for reply to show cause order)

✓ 04/27/2018 Court ~~~16. ORDER TRANSFERRING CASE (notice of appeal in this case ~~2018-1512~~, along with all other filings in the case, are hereby transferred to the appellate division of the Circuit Court of the Twentieth Judicial Circuit in and for Lee County for review.)

#### Author history

Information in this record has been filed by: Mary Wallace (04/20/2018 01:23:27 PM)

Mary Wallace (04/20/2018 01:24:30 PM)  
Marci Maddron (04/23/2018 11:26:12 AM)  
Marci Maddron (04/23/2018 11:28:09 AM)  
Marci Maddron (04/23/2018 11:29:14 AM)  
Marci Maddron (04/23/2018 11:30:59 AM)  
Marci Maddron (04/23/2018 11:32:02 AM)  
Marci Maddron (04/23/2018 11:33:47 AM)  
Marci Maddron (04/23/2018 11:34:38 AM)  
Marci Maddron (04/23/2018 11:36:55 AM)  
Marci Maddron (04/23/2018 11:41:41 AM)  
Marci Maddron (04/23/2018 11:45:03 AM)  
Marci Maddron (04/23/2018 11:47:24 AM)  
Marci Maddron (04/23/2018 11:48:35 AM)  
Marci Maddron (04/23/2018 11:50:05 AM)  
Marci Maddron (04/23/2018 11:52:30 AM)  
Marci Maddron (04/23/2018 11:59:17 AM)  
Marci Maddron (04/23/2018 12:03:17 PM)  
Marci Maddron (04/23/2018 12:05:33 PM)  
Marci Maddron (04/23/2018 12:09:49 PM)  
Marci Maddron (04/23/2018 12:11:15 PM)  
Marci Maddron (04/23/2018 12:12:59 PM)  
Marci Maddron (04/23/2018 12:13:35 PM)  
Lorraine Hammer (04/23/2018 12:25:04 PM)  
Mary Wallace (04/23/2018 04:19:02 PM)  
Mary Wallace (04/24/2018 02:22:33 PM)  
Mary Wallace (04/24/2018 02:22:46 PM)  
Marci Maddron (04/26/2018 09:48:53 AM)  
Marci Maddron (04/26/2018 09:51:21 AM)  
Marci Maddron (04/26/2018 09:53:59 AM)  
Marci Maddron (04/27/2018 02:48:32 PM)  
Marci Maddron (05/01/2018 08:28:04 AM)

Marci Maddron (05/01/2018 08:31:29 AM)  
Marci Maddron (05/01/2018 08:51:00 AM)  
Mary Wallace (05/07/2018 01:32:27 PM)  
Mary Wallace (05/10/2018 03:14:10 PM)  
Marci Maddron (05/10/2018 04:01:37 PM)  
Marci Maddron (05/10/2018 04:05:01 PM)  
Marci Maddron (05/18/2018 01:34:35 PM)  
Marci Maddron (07/09/2018 10:30:33 AM)

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
SECOND DISTRICT, POST OFFICE BOX 327, LAKE LAND, FL 33802-0327

July 03, 2018

**CASE NO.: 2D18-1512**

L.T. No.: 17-CA-421

17-MM-815

SCOTT HUMINSKI

v.

STATE OF FLORIDA

---

Appellant / Petitioner(s),

Appellee / Respondent(s).

**BY ORDER OF THE COURT:**

The appellant's motion to vacate order transferring case is stricken as unauthorized. This case is closed. Further motions filed in this case will be subject to being stricken without further notice.

I HEREBY CERTIFY that the foregoing is a true copy of the original court order.

Served:

John M. Klawikofsky, A.A.G.

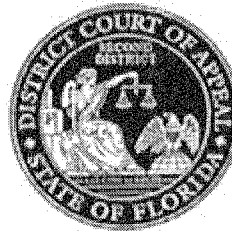
Scott Huminski

Linda Doggett, Clerk

ec

*Mary Elizabeth Kuenzel*

Mary Elizabeth Kuenzel  
Clerk



IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
SECOND DISTRICT, POST OFFICE BOX 327, LAKE LAND, FL 33802-0327

May 15, 2018

**CASE NO.: 2D18-1512**

L.T. No.: 17-CA-421

17-MM-815

SCOTT HUMINSKI

v.

STATE OF FLORIDA

---

Appellant / Petitioner(s),

Appellee / Respondent(s).

**BY ORDER OF THE COURT:**

Appellant's motion to transmit order of transfer is denied.

I HEREBY CERTIFY that the foregoing is a true copy of the original court order.

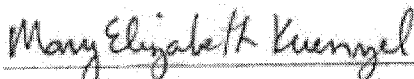
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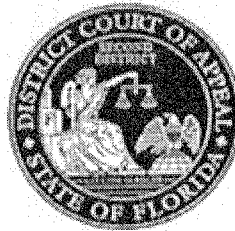
John M. Klawikofsky, A.A.G.

Scott Huminski

Linda Doggett, Clerk

ec

  
\_\_\_\_\_  
Mary Elizabeth Kuenzel  
Clerk



## MEMORANDUM

To: All Parties

From: Lori Slisz, Deputy Clerk

Date: May 8, 2018

Re:

Scott Huminski

Plaintiff(s)

vs

State of Florida

Defendant(s)

New Case No.: 18-AP-9

New Judge Assignment: Appellate Banc

This is to advise you that the above styled case was transferred from The Second District Court of Appeal to Lee County Appellate Division per order dated April 27, 2018. The new case number and judge assignment are indicated above. If you have any questions, or need assistance, please direct inquiries to the Lee County Clerk of Court, Civil Division, Lee County Justice Center, P.O. Box 310, Fort Myers, Florida, 33902. If you wish to contact us by phone, you may call (239) 533-5000.

Thank you

RECEIVED, 5/8/2018 9:04 AM, Clerk, Second District Court of Appeal

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
SECOND DISTRICT, POST OFFICE BOX 327, LAKELAND, FL 33802-0327

May 04, 2018

**CASE NO.: 2D18-1512**

L.T. No.: 17-CA-421

17-MM-815

SCOTT HUMINSKI

v.

STATE OF FLORIDA

---

Appellant / Petitioner(s),

Appellee / Respondent(s).

**BY ORDER OF THE COURT:**

Appellant's motion for rehearing is denied.

I HEREBY CERTIFY that the foregoing is a true copy of the original court order.


Served:

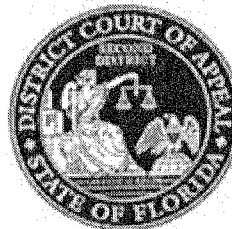
John M. Klawikofsky, A.A.G.

Scott Huminski

Linda Doggett, Clerk

ag

  
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Mary Elizabeth Kuenzel  
Clerk





IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
SECOND DISTRICT, POST OFFICE BOX 327, LAKELAND, FL 33802-0327

April 27, 2018

**CASE NO.: 2D18-1512**

L.T. No.: 17-CA-421  
17-MM-815

SCOTT HUMINSKI

v.

STATE OF FLORIDA

Appellant / Petitioner(s),

Appellee / Respondent(s).

**BY ORDER OF THE COURT:**

As the appellant is seeking review of two related orders entered by the Lee County Court in case number 17-MM-000815, the appellant's misdemeanor case, the notice of appeal in this case 2D18-1512, along with all other filings in the case, are hereby transferred to the appellate division of the Circuit Court of the Twentieth Judicial Circuit in and for Lee County for review. The circuit court shall address all motions filed by the appellant that are not resolved in the present order, and shall in particular promptly resolve the appellant's motions for appointment of counsel. If counsel is appointed, the circuit court shall provide counsel with a copy of the present order and should allow a reasonable period of time for counsel to review the appellant's other motions. Counsel should promptly inform the circuit court of whether he or she wishes to adopt any of the motions or whether any of them should be withdrawn.

Counsel may at his or her discretion examine any jurisdictional issues raised by the appellant in his filings.

In light of this transfer, the appellant's "motion to transfer and/or consolidate interlocutory appeal with this appeal from final judgment" is denied.

LaROSE, C.J., and VILLANTI and SALARIO, JJ., Concur.

I HEREBY CERTIFY that the foregoing is a true copy of the original court order.

Served:

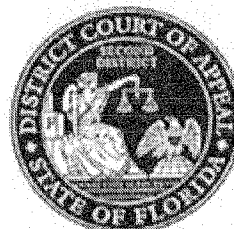
John M. Klawikofsky, A.A.G.

Scott Huminski

Linda Doggett, Clerk

ks

*Mary Elizabeth Kuenzel*  
Mary Elizabeth Kuenzel  
Clerk



IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
SECOND DISTRICT, POST OFFICE BOX 327, LAKE LAND, FL 33802-0327

April 24, 2018

**CASE NO.: 2D18-1512**

L.T. No.: 17-CA-421

17-MM-815

SCOTT HUMINSKI

v.

STATE OF FLORIDA

---

Appellant / Petitioner(s),

Appellee / Respondent(s).

**BY ORDER OF THE COURT:**

Appellant has filed an amended notice of appeal. A new proceeding is not initiated.

I HEREBY CERTIFY that the foregoing is a true copy of the original court order.

Served:

John M. Klawikofsky, A.A.G.

Scott Huminski

Linda Doggett, Clerk

ds

*Mary Elizabeth Kuenzel*

Mary Elizabeth Kuenzel  
Clerk



IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
SECOND DISTRICT, POST OFFICE BOX 327, LAKE LAND, FL 33802-0327

April 23, 2018

**CASE NO.: 2D18-1512**

L.T. No.: 17-CA-421

17-MM-815

SCOTT HUMINSKI

v.

STATE OF FLORIDA

---

Appellant / Petitioner(s),

Appellee / Respondent(s).

**BY ORDER OF THE COURT:**

In response to this court's order, Appellant has filed copies of the orders on appeal. The orders were entered by the 20th Judicial Circuit County Court for Lee County. Within fifteen days, Appellant shall show cause why this appeal should not be transferred to the appellate division of the 20th Judicial Circuit Court for Lee County.

I HEREBY CERTIFY that the foregoing is a true copy of the original court order.

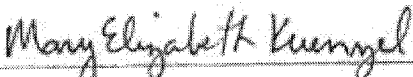
Served:

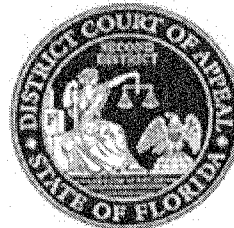
John M. Klawikofsky, A.A.G.

Scott Huminski

Linda Doggett, Clerk

ec

  
\_\_\_\_\_  
Mary Elizabeth Kuenzel  
Clerk



IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
SECOND DISTRICT, POST OFFICE BOX 327, LAKELAND, FL 33802-0327

April 20, 2018

**CASE NO.: 2D18-1512**

L.T. No.: 17-CA-421

17-MM-815

SCOTT HUMINSKI

v. STATE OF FLORIDA

---

Appellant / Petitioner(s),

Appellee / Respondent(s).

**BY ORDER OF THE COURT:**

Appellant's "motion to assign docket number to this appeal from conviction and sentencing" is denied as moot.

I HEREBY CERTIFY that the foregoing is a true copy of the original court order.

Served:

John M. Klawikofsky, A.A.G.

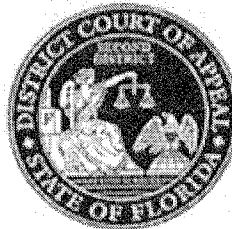
Scott Huminski

Linda Doggett, Clerk

ec

*Mary Elizabeth Kuenzel*

Mary Elizabeth Kuenzel  
Clerk



IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
SECOND DISTRICT, POST OFFICE BOX 327, LAKELAND, FL 33802-0327

April 20, 2018

**CASE NO.: 2D18-1512**

L.T. No.: 17-CA-421

17-MM-815

SCOTT HUMINSKI

v.

STATE OF FLORIDA

---

Appellant / Petitioner(s),

Appellee / Respondent(s).

**BY ORDER OF THE COURT:**

Appellant's Amended Notice of Appeal and Corrected Amended Notice of Appeal refers to a March 16, 2018 "conviction order, sentencing order and final judgment." Within ten days from the date of this order, Appellant shall submit a copy to this court of the order(s) on appeal.

I HEREBY CERTIFY that the foregoing is a true copy of the original court order.

Served:

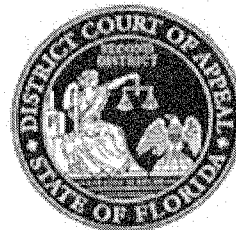
John M. Klawikofsky, A.A.G.

Scott Huminski

Linda Doggett, Clerk

ds

Mary Elizabeth Kuenzel  
Mary Elizabeth Kuenzel  
Clerk



IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
SECOND DISTRICT, POST OFFICE BOX 327, LAKELAND, FL 33802-0327

April 20, 2018

**CASE NO.: 2D18-1512**

L.T. No.: 17-CA-421

17-MM-815

SCOTT HUMINSKI

v.

STATE OF FLORIDA

---

Appellant / Petitioner(s),

Appellee / Respondent(s).

**BY ORDER OF THE COURT:**

Appellant's motion to correct caption and to docket filings in this appeal is granted.

I HEREBY CERTIFY that the foregoing is a true copy of the original court order.

Served:

John M. Klawikofsky, A.A.G.

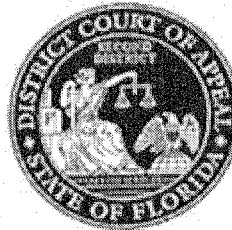
Scott Huminski

Linda Doggett, Clerk

ds

*Mary Elizabeth Kuenzel*

Mary Elizabeth Kuenzel  
Clerk



IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
SECOND DISTRICT, POST OFFICE BOX 327, LAKELAND, FL 33802-0327

April 19, 2018

**CASE NO.: 2D18-1512**

L.T. No.: 17-CA-421

17-MM-815

SCOTT HUMINSKI

v.

TOWN OF GILBERT, AZ, ET AL

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Appellant / Petitioner(s),

Appellee / Respondent(s).

**BY ORDER OF THE COURT:**

Appellant shall file an amended notice of appeal in the circuit court, with a copy sent to this court, within fifteen days that identifies the date of the order for which review is sought. Failure to comply may result in the dismissal of this appeal for lack of jurisdiction. Appellant shall attach a copy of the order appealed.

I HEREBY CERTIFY that the foregoing is a true copy of the original court order.

Served:

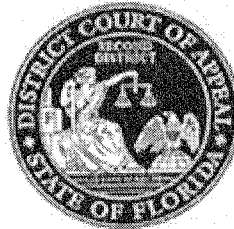
John M. Klawikofsky, A.A.G.

Scott Huminski

Linda Doggett, Clerk

Is

Mary Elizabeth Kuenzel  
Mary Elizabeth Kuenzel  
Clerk



IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
SECOND DISTRICT, POST OFFICE BOX 327, LAKE LAND, FL 33802-0327

April 19, 2018

CASE NO.: 2D18-1512

L.T. No.: 17-CA-421

SCOTT HUMINSKI

v. TOWN OF GILBERT, AZ, ET AL

Appellant / Petitioner(s),

Appellee / Respondent(s).

**BY ORDER OF THE COURT:**

This appeal has been filed without a filing fee required by section 35.22(3), Florida Statutes.

Appellant shall forward the required \$300.00 filing fee or, if applicable, an order from the circuit court finding appellant insolvent pursuant to sections 57.081 and 924.17, Florida Statutes, or a clerk's certificate pursuant to section 27.52, Florida Statutes, within forty days from the date of this order.

If this court does not receive any of the above within the prescribed time, this appeal may be subject to dismissal without further notice.

I HEREBY CERTIFY that the foregoing is a true copy of the original court order.

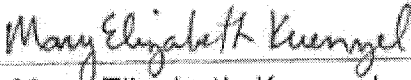
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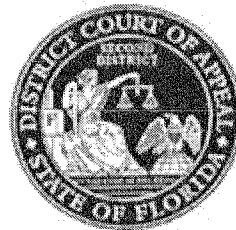
John M. Klawikofsky, A.A.G.

Scott Huminski

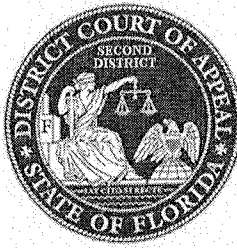
Linda Doggett, Clerk

Is

  
Mary Elizabeth Kuenzel  
Clerk







**DISTRICT COURT OF APPEAL**  
**SECOND DISTRICT**  
Post Office Box 327  
LAKELAND, FLORIDA 33802  
(863)940-6060

**ACKNOWLEDGMENT OF NEW CASE**

DATE: April 19, 2018

STYLE: SCOTT HUMINSKI v. TOWN OF GILBERT, AZ, ET AL

2DCA#: 2D18-1512

The Second District Court of Appeal has received the Appeal reflecting a filing date of April 6, 2018.

The county of origin is Lee.

The lower tribunal case number provided is 17-CA-421.

The filing fee is: Fee Owed.

Case Type: Criminal Other Final

The Second District Court of Appeal's case number must be utilized on all pleadings and correspondence filed in this cause. Moreover, ALL PLEADINGS SIGNED BY AN ATTORNEY MUST INCLUDE THE ATTORNEY'S FLORIDA BAR NUMBER.

Please review and comply with any handouts enclosed with this acknowledgment.

cc: John M. Klawikofsky, A.A.G. Scott Huminski

Linda Doggett, Clerk

Paper files transferred to Archives? ☐ Yes

case report

AG #L18-1-11432

Closed Case

**Scott Huminski** v. State of Florida

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venue

Current court: 2nd DCA State  
 Court number: 2D18-3856  
 Originating county: Lee

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staffing

Lead counsel: Jonathan Tannen  
 Unit: Criminal Appeals  
 Location: Tampa

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synopsis

Category: Prohibition Appeal Opponent  
 Major issues:  
 Constitutional issue: None  
 Challenged statute:  
 General keywords:

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case history

Year case opened: 2018  
 Database entry: 09/27/2018  
 State's most recent activity:  
 Nature of most recent activity:

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Additional case numbers

Lower court number: 17-CA-421, 17-MM-815

Contract number:

LOA number:

---

Other representation

AG attorneys previously  
 assigned to this case:  
 Opposing counsel category:  
 Opposing counsel name(s):  
 DC. Number:  
 Aliases:  
 Other counsel in case:  
 Prosecutor:  
 Contact Number:

### Special comments

- ✓ 09/28/18-Motion for appointment of counsel-mm
- 10/01/18-Motion to accept filing fee-mm
- ✓ 10/01/18-Court Order-Petitioner's September 27, 2018 notice does not satisfy this court's fee order as this court has not received an electronic payment for the filing fee.-mm
- 10/01/18-Court Order-Appellant's motion for appointment of counsel and to waive filing fee is denied without prejudice to resubmit it following satisfaction of this court's fee order of September 27, 2018.-mm
- ✓ 10/02/18-Court Order-As the fee was received today, Petitioner's motion to accept filing fee is denied as moot-mm
- 10/03/18 Note from Appellant through intake saying he had a stroke after back surgery 8/23/18. mw
- ✓ 10/26/18-Court Order-Appellant's motion for reconsideration/rehearing en banc is denied-mm

Location of File:

Victim information

*Caution: The following victim information may be confidential under Florida law.*

### Case docket

- |              |       |         |  |
|--------------|-------|---------|--|
| 09/26/2018   | Oppn. | ~~~~1.  | PETITION FOR WRIT OF PROHIBITION   |
| ✓ 09/27/2018 | Court | ~~~~2.  | ORDER TO SHOW CAUSE OPPONENT   |
| 09/28/2018   | Oppn. | ~~~~3.  | NOTICE TO COURT (of proof of payment)  |
| 10/01/2018   | Oppn. | ~~~~4.  | MOTION TO STAY PROCEEDINGS/BRIEFING (Emergency)  |
| ✓ 10/01/2018 | Court | ~~~~5.  | ORDER DENYING STAY OF PROCEEDING/BRIEFING  |
| 10/01/2018   | Oppn. | ~~~~6.  | NOTICE TO COURT (Supplement Amending petition re: mandating Lee clerk to supply record for appeal) |
| 10/02/2018   | Oppn. | ~~~~7.  | MOTION TO STAY PROCEEDINGS/BRIEFING (order of conviction and 20th circuit appeal 18-AP-3)          |
| 10/03/2018   | Oppn. | ~~~~8.  | MOTION TO STAY PROCEEDINGS/BRIEFING (Emergency motion to stay arrest warrant)                      |
| ✓ 10/18/2018 | Court | ~~~~9.  | FINAL DECISION (denied)  |
| 10/19/2018   | Oppn. | ~~~~10. | MOTION FOR REHEARING OR CLARIFICATION OR CERTIFICATION   |
| 10/29/2018   | Oppn. | ~~~~11. | NOTICE TO COURT (Notice of Supplemental Authority)   |

### Author history

Information in this record has been filed by: Debra Niebel (09/27/2018 05:28:02 PM)  
 Debra Niebel (09/27/2018 05:29:06 PM)  
 Debra Niebel (09/27/2018 05:29:14 PM)  
 Debra Niebel (09/28/2018 12:44:53 PM)  
 Mary Wallace (10/01/2018 04:06:46 PM)  
 Mary Wallace (10/01/2018 04:08:10 PM)  
 Marci Maddron (10/03/2018 09:03:01 AM)  
 Marci Maddron (10/03/2018 11:40:07 AM)  
 Marci Maddron (10/03/2018 11:41:27 AM)

Mary Wallace (10/03/2018 04:04:12 PM)  
Mary Wallace (10/03/2018 04:04:19 PM)  
Mary Wallace (10/04/2018 09:09:47 AM)  
Mary Wallace (10/04/2018 09:10:25 AM)  
Marci Maddron (10/05/2018 02:08:03 PM)  
Marci Maddron (10/05/2018 02:22:07 PM)  
Lorraine Hammer (10/26/2018 07:10:36 AM)  
Mary Wallace (10/29/2018 10:18:28 AM)  
Marci Maddron (10/29/2018 02:40:27 PM)  
Marci Maddron (10/31/2018 09:22:34 AM)

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
SECOND DISTRICT, POST OFFICE BOX 327, LAKELAND, FL 33802-0327

October 26, 2018

**CASE NO.: 2D18-3856**

L.T. No.: 17-CA-421,  
17-MM-815

SCOTT HUMINSKI

v.

STATE OF FLORIDA

---

Appellant / Petitioner(s),

Appellee / Respondent(s).

**BY ORDER OF THE COURT:**

Appellant's motion for reconsideration/rehearing en banc is denied.

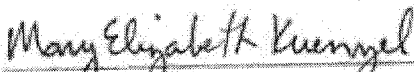
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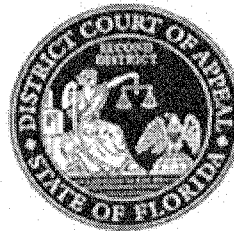
Served:

Attorney General, Tampa     Scott Huminski

Linda Doggett, Clerk

ag

  
Mary Elizabeth Kuenzel  
Clerk



IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
SECOND DISTRICT, POST OFFICE BOX 327, LAKELAND, FL 33802-0327

October 18, 2018

CASE NO.: 2D18-3856  
L.T. No.: 17-CA-421,  
17-MM-815

SCOTT HUMINSKI

v.

STATE OF FLORIDA

---

Appellant / Petitioner(s),

Appellee / Respondent(s).

**BY ORDER OF THE COURT:**

Petitioner's petition for writ of prohibition is denied.

Petitioner's motion for appointment of counsel and to waive filing fee is denied.  
Petitioner's emergency motion to stay arrest warrant is denied. Petitioner's motion to  
stay order of conviction is denied.

VILLANTI, LUCAS, and ROTHSTEIN-YOUAKIM, JJ., Concur.

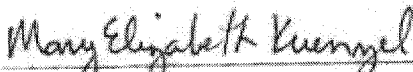
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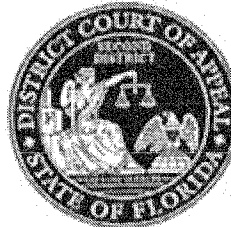
Served:

Attorney General, Tampa      Scott Huminski

Linda Doggett, Clerk

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Mary Elizabeth Kuenzel  
Clerk



IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
SECOND DISTRICT, POST OFFICE BOX 327, LAKELAND, FL 33802-0327

October 02, 2018

**CASE NO.: 2D18-3856**

L.T. No.: 17-CA-421,  
17-MM-815

SCOTT HUMINSKI

v. STATE OF FLORIDA

---

Appellant / Petitioner(s),

Appellee / Respondent(s).

**BY ORDER OF THE COURT:**

As the fee was received today, Petitioner's motion to accept filing fee is denied as moot.

I HEREBY CERTIFY that the foregoing is a true copy of the original court order.

Served:

Attorney General, Tampa

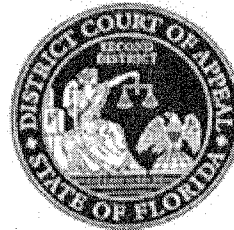
Scott Huminski

Linda Doggett, Clerk

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*Mary Elizabeth Kuenzel*

Mary Elizabeth Kuenzel  
Clerk



IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
SECOND DISTRICT, POST OFFICE BOX 327, LAKELAND, FL 33802-0327

October 01, 2018

**CASE NO.: 2D18-3856**

L.T. No.: 17-CA-421,  
17-MM-815

SCOTT HUMINSKI

v. STATE OF FLORIDA

---

Appellant / Petitioner(s),

Appellee / Respondent(s).

**BY ORDER OF THE COURT:**

Appellant's emergency motion to stay is denied without prejudice to resubmit it following satisfaction of this court's order of September 27, 2018.

I HEREBY CERTIFY that the foregoing is a true copy of the original court order.

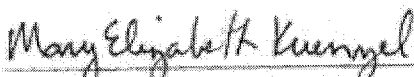
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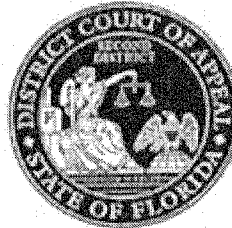
Attorney General, Tampa

Scott Huminski

Linda Doggett, Clerk

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Mary Elizabeth Kuenzel  
Clerk





IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
SECOND DISTRICT, POST OFFICE BOX 327, LAKELAND, FL 33802-0327

October 01, 2018

**CASE NO.: 2D18-3856**

L.T. No.: 17-CA-421,  
17-MM-815

SCOTT HUMINSKI

v. STATE OF FLORIDA

---

Appellant / Petitioner(s),

Appellee / Respondent(s).

**BY ORDER OF THE COURT:**

Petitioner's September 27, 2018 notice does not satisfy this court's fee order as this court has not received an electronic payment for the filing fee.

I HEREBY CERTIFY that the foregoing is a true copy of the original court order.

Served:

Attorney General, Tampa

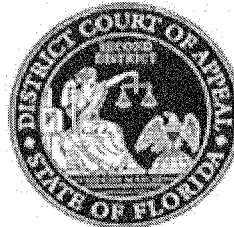
Scott Huminski

Linda Doggett, Clerk

ds

*Mary Elizabeth Kuenzel*

Mary Elizabeth Kuenzel  
Clerk



IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
SECOND DISTRICT, POST OFFICE BOX 327, LAKELAND, FL 33802-0327

October 01, 2018

**CASE NO.: 2D18-3856**

L.T. No.: 17-CA-421,  
17-MM-815

SCOTT HUMINSKI

v.

STATE OF FLORIDA

---

Appellant / Petitioner(s),

Appellee / Respondent(s).

**BY ORDER OF THE COURT:**

Appellant's motion for appointment of counsel and to waive filing fee is denied without prejudice to resubmit it following satisfaction of this court's fee order of September 27, 2018.

I HEREBY CERTIFY that the foregoing is a true copy of the original court order.

Served:

Attorney General, Tampa

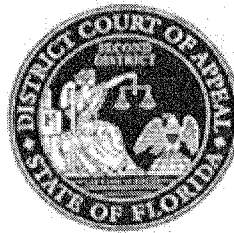
Scott Huminski

Linda Doggett, Clerk

ds

*Mary Elizabeth Kuenzel*

Mary Elizabeth Kuenzel  
Clerk



**IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
SECOND DISTRICT, POST OFFICE BOX 327, LAKELAND, FL 33802-0327**

September 27, 2018

**CASE NO.: 2D18-3856**

L.T. No.: 17-CA-421,  
17-MM-815

SCOTT HUMINSKI

v.

STATE OF FLORIDA

---

Appellant / Petitioner(s),

Appellee / Respondent(s).

**BY ORDER OF THE COURT:**

Petitioner's motion to waive filing fee is denied without prejudice to his submitting to this court an affidavit of insolvency in conformity with the requirements of chapter 57, Florida Statutes (2017), within twenty days from the date of this order, failing which this petition may be subject to dismissal without further notice. Petitioner's request for appointment of counsel and motion to stay are denied without prejudice to resubmit the motions following satisfaction of this court's fee order.

I HEREBY CERTIFY that the foregoing is a true copy of the original court order.

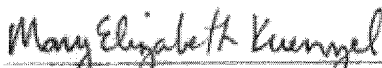
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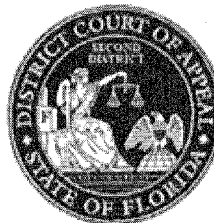
Attorney General, Tampa

Scott Huminski

Linda Doggett, Clerk

ks

  
\_\_\_\_\_  
Mary Elizabeth Kuenzel  
Clerk



NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING  
MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL  
OF FLORIDA  
SECOND DISTRICT

YORLAN ESPINOSA PENA; WARNER B. )  
BARRANTES; SARAH HAMADI; ROBERT )  
L. GARCIA; RANDY MORENO; PETER W. )  
RODINO; MIGUEL GUZMAN; MICHAEL R. )  
MYZAK; MAXWELL S. GIVEN; MAX GENE )  
MILLER; MARK R. DHONDT; MARK S. )  
MAGITMAN; LAZARO MANUEL URQUILA )  
VENTA; KEVIN PEREZ; JOSEPH )  
RICHARD DIAZ; JESUS A. SANCHEZ; )  
IRVING HERNANDEZ; HENRY GUEVARA; )  
PATRICK J. GARRY; GABRIEL L. )  
CUERVO; EDWIN OSCAR TORRES )  
VAZQUEZTELL; DANIEL J. BARRON; )  
CYPRISS A. WOODALL; CLAUDIA )  
GRAVERAN; ALEXANDER M. HOWARD; )  
AIMEE SANTANA PEREZ; GEOFFREY C. )  
HART; and BLAS E. ALEMAN, )

Petitioners, )

v. )

STATE OF FLORIDA, )

Respondent. )

Case No. 2D17-4465

Opinion filed November 9, 2018.

Petition for Writ of Certiorari to the Circuit  
Court for the Twentieth Judicial Circuit for  
Lee County; sitting in its appellate capacity.

Louis Arslanian, Hollywood, for Petitioners.

Pamela Jo Bondi, Attorney General,  
Tallahassee, and C. Todd Chapman,  
Assistant Attorney General, Tampa, for  
Respondent.

MORRIS, Judge.

The petitioners, drivers appearing in county court for civil traffic infractions, seek certiorari review of a circuit court order denying their joint petition for writ of prohibition, which sought review of the county judge's denial of the petitioners' motions to disqualify the county judge from presiding over their traffic cases. The circuit court denied the petition for writ of prohibition, concluding that the motions to disqualify the county judge were legally insufficient. We grant the petition for writ of certiorari because the motions were legally sufficient and the circuit court departed from the essential requirements of the law in denying the petition for writ of prohibition.

#### I. Background

In their motions to disqualify filed in county court, the petitioners asserted that they had a well-founded fear that they would not receive a fair proceeding before the county judge based on the following facts:

[Petitioners' counsel] was approached by [a hearing officer] in the middle of December, 2016 and was warned that [the hearing officer] "was talked to" and that he would no longer be as lenient as he had been in the past.

Not knowing who "talked to" [the hearing officer], [counsel] was unaware if any inappropriate communications had taken place between [the hearing officer] and any other court official.

In order to make that determination, the undersigned's office requested all e-mails relating to traffic court from [the county judge].

[Counsel's] office received a series of e-mails from court administration on May 9, 2017. One of these e-mails

was troubling, and appears to establish inappropriate conduct on the part of the clerk's office and [the county judge].

An e-mail dated Wednesday, December 14, 2016[,] was written from [a] Clerk employee[] to [the county judge]. In this e-mail, [the employee] references the hearing officer who is presiding over the docket on that day. Removing herself from her position as a neutral clerk employee, and becoming an adversary to drivers, [the employee] reported to [the county judge] that the hearing officer was being "talked into withholding adjudication" and she needed to talk to [the county judge] about this conduct in court. On the same day, [the county judge] replied to [the employee] and assured her that he will "have a discussion with him shortly."

Shortly after this e-mail was sent by [the county judge], [counsel] was approached by [the hearing officer], and told that he had "been talked to" and that he would no longer be as lenient as he had been in the past.

In May 2017, [the county judge] called the undersigned to the bench in open court. [The county judge] questioned why [counsel's] law firm had requested his traffic related e-mails. [Counsel] explained that he had been told by the traffic magistrates that they had "been talked to" and would no longer be as lenient as they had been in the past. Further, [the county judge] explained that he had read a report that indicated that Lee County was known as a place for aggressive drivers, presumably explaining why he "talked to" the traffic magistrates about their actions in traffic court.

In addition to the above allegations, the motions also alleged that after counsel had inquired about the e-mails, his clients' cases were moved from their originally-scheduled docket to a special docket assigned to this particular county judge.

On April 20, 2017[,] [counsel's] law firm filed a number of Notices of Appearances for traffic infractions, requesting a County Court Judge to hear the cases.

....

[Counsel's] office learned that this matter was assigned to [the county judge's] traffic docket on May 17, 2017.

....

Even though another Judge was scheduled to be assigned these cases, [the county judge] took it upon himself to assign all of these cases to a special docket in his own courtroom. The undersigned's office called the Clerk's office to ascertain why this happened and was advised by an assistant Supervisor that another Judge should have been assigned those cases based on the pre-determined schedule. The undersigned's office asked for a copy of the Administrative Order that allowed for one Judge to avoid the random assignment of cases and to place them on a special docket in his/her own courtroom. That request has not been responded to at the time of the filing of this motion. Another supervisor at the clerk's office did reply with an e-mail, explaining that the judge's dockets were busy and this special docket was set up in an effort to deal with the high number of traffic cases presented to the county court judges. Again, a copy of the administrative order authorizing this was requested, but no reply has been received.

Attached to the motion to disqualify was an affidavit of counsel attesting to the facts alleged in the motion, as well as a copy of the e-mails between the county judge and the clerk's employee. The motion also described past traffic court rulings by the county judge:

In the past, [the county judge] required a number of the undersigned's clients to pay their fines and court costs the same day as their traffic hearing. This ruling was in clear violation of Traffic Rule 6.480(a). Consequently, many clients had their driver license suspended improperly based on this improper court order.

Recently, [the county judge] ruled that a recapture period applied to the speedy trial rule for traffic infractions, even though the Traffic Rules clearly do not provide for a recapture period (Traffic Rule 6.325(a)). Consequently, three drivers who were tried more than 180 days after the issuance date of their citation did not have their cases dismissed, even though they were not attributable for any delays in their case. These cases are now on appeal before the Lee County Circuit Court.

[The county judge] has recently ruled that if a driver avails himself of Traffic Rule 6.630(n), that driver waives his/her right to a speedy trial, even though the rule makes no mention of this waiver.

The county judge denied the motions to disqualify "as legally insufficient."

The petitioners sought review of the denial of their motions to disqualify by filing a joint petition for writ of prohibition in the circuit court. See Sutton v. State, 975 So. 2d 1073, 1077 (Fla. 2008) ("This Court has recognized that prohibition is a proper remedy to seek review of the denial of a motion to disqualify . . ."). The circuit court denied the petition, concluding that

[p]etitioners did not have a well-founded, objectively reasonable, fear they would not receive fair hearings. The allegations are those of adverse judicial rulings, and pure speculation as to the reasons why the county judge met with the hearing officer, the content of that meeting, or why the docket was transferred. The motions to disqualify, and petition, allege no statement of bias or prejudice on the part of the county judge towards Petitioners, only that he mentioned a report about aggressive drivers. [Thus,] the motions to disqualify were legally insufficient.

## II. Analysis

In their petition for writ of certiorari filed in this court, the petitioners argue that the circuit court departed from the essential requirements of the law in denying their petition for writ of prohibition because their motions to disqualify the county judge were legally sufficient in that the facts as alleged gave the petitioners a reasonable fear of receiving an unfair trial before the county judge.

Because the petition for writ of prohibition filed in the circuit court sought review of the denials of the motions to disqualify by the county judge, the petition for writ of prohibition served a similar function as a direct appeal. Sutton, 975 So. 2d at 1077-78. Therefore, the circuit court's denial of the petition for writ of prohibition is reviewable in this court by certiorari. See id. at 1079-80. "[T]he reviewing court in this context can only grant a petition for writ of certiorari based on a departure from the essential



requirements of law. A departure from the essential requirements of law is not mere legal error, but instead, involves a 'gross miscarriage of justice.' " Id. at 1080-81 (citation omitted) (quoting Haines City Cmty. Dev. v. Heggs, 658 So. 2d 523, 527 (Fla. 1995)).

A party moving to disqualify a judge must file an affidavit in good faith stating fear that he or she will not receive a fair trial on account of the prejudice of the trial judge, alleging facts and reasons for the belief that prejudice exists. Gregory v. State, 118 So. 3d 770, 778 (Fla. 2013) (citing § 38.10, Fla. Stat. (2011)). A judge ruling on an initial motion to disqualify "shall determine only the legal sufficiency of the motion and shall not pass on the truth of the facts alleged." Id. (quoting Fla. R. Jud. Admin. 2.330(f)). "Whether the motion is legally sufficient requires a determination as to whether the alleged facts would create in a reasonably prudent person a well-founded fear of not receiving a fair and impartial trial." Id. (quoting Rodriguez v. State, 919 So. 2d 1252, 1274 (Fla. 2005)). The fear must be objectively reasonable; a subjective fear is not sufficient. Id. (quoting Arbelaez v. State, 898 So. 2d 25, 41 (Fla. 2005)). If the motion is legally sufficient, the judge shall grant disqualification and proceed no further in the action; if the motion is legally insufficient, the judge shall deny the motion without commenting on the allegations in the motion. Id. (quoting rule 2.330(f)).

Here, the allegations suggesting the county judge's tough stance on traffic defendants and noting his prior adverse rulings may not have been sufficient in themselves to show bias. Compare Thompson v. State, 759 So. 2d 650, 659 (Fla. 2000) ("[T]he fact that a judge has ruled adversely to the party in the past does not constitute a legally sufficient ground for a motion to disqualify."), Arbelaez v. State, 775

So. 2d 909, 916 (Fla. 2000) ("As to the claims of bias and prejudice, there was nothing in [the defendant's] allegations to show that [the judge] had a personal bias or prejudice against him. Neither her 'tough-on-crime' stance nor her former employment as a prosecutor was legally sufficient for disqualification."), and Foy v. State, 818 So. 2d 704, 706 (Fla. 5th DCA 2002) (holding that judge's comments that "there is no cure for pedophilia" and that "treatment doesn't do a bit of good" did not express "any standard sentencing policy for those individuals charged with committing sexual acts on minors" and were therefore legally insufficient for disqualification) with Martin v. State, 804 So. 2d 360, 364 (Fla. 4th DCA 2001) (holding that motion to disqualify was legally sufficient where "the judge's remarks could reasonably be interpreted as announcing a fixed intention to have probation invariably follow any jail or prison sentence that he would impose"), and Torres v. State, 697 So. 2d 175, 177 (Fla. 4th DCA 1997) ("[A] judge's announced policy that no probation violator will be sentenced to time served amounts to legally sufficient grounds for disqualification because the policy personally affects the petitioner and places him in fear that he will not receive a fair sentencing hearing.").

However, the petitioners also alleged that the county judge instructed the hearing officer to be less lenient on traffic defendants and that the county judge believed that drivers in the county were aggressive. Moreover, the petitioners alleged that the county judge inquired why counsel requested the judge's e-mails and that soon thereafter, counsel's clients' cases were removed from their original docket and transferred to the docket of this particular county judge. These allegations combined were sufficient to give the petitioners an objective fear that they would not receive a fair trial before this particular county judge in their traffic cases. See State v. Voong Leng,

987 So. 2d 236, 237 (Fla. 4th DCA 2008) (granting petition for writ of certiorari because motion to disqualify the county judge alleged prior comments by the trial judge which showed bias and caused the movant to have a well-grounded fear that he would not receive a fair trial). Contrary to the circuit court's conclusion, the allegations in the motion to disqualify were not general and speculative; rather, they were specific to counsel and his traffic clients, and they were based on specific conversations between the county judge and the clerk's employee, the hearing officer, and counsel.

In denying the writ of prohibition, the circuit court departed from the essential requirements of law. The circuit court's order results in a miscarriage of justice because twenty-eight traffic cases remain pending before a county judge who should have recused himself based on the petitioners' allegations establishing a well-founded fear of not receiving a fair and impartial trial. See generally Voong Leng, 987 So. 2d at 237 (granting certiorari relief where circuit court improperly denied writ of prohibition because motion to disqualify was legally sufficient and two other circuit courts had granted writs of prohibition on identical grounds); State v. Shaw, 643 So. 2d 1163, 1164-66 (Fla. 4th DCA 1994) (granting certiorari relief where circuit court improperly granted petition for writ of prohibition and circuit court's ruling resulted "in a violation of clearly established law and a miscarriage of justice because it offends procedures integral to the fair administration of justice").

Petition for writ of certiorari granted; order quashed.

LaROSE, C.J., Concur.

ATKINSON, J., Dissents with opinion.

ATKINSON, Judge, Dissenting.

I would deny the petition for writ of certiorari. The circuit court did not violate "a clearly established principle of law resulting in a miscarriage of justice" when it determined that the Petitioners' motions to disqualify the county court judge were legally insufficient. State v. Shaw, 643 So. 2d 1163, 1165 (Fla. 4th DCA 1994) (quoting Combs v. State, 436 So. 2d 93, 96 (Fla. 1983)); see Fla. R. Jud. Admin. 2.330(d)(1) (requiring that a motion to disqualify "show . . . that the party fears that he or she will not receive a fair trial or hearing because of specifically described prejudice or bias of the judge" (emphasis added)); Sutton v. State, 975 So. 2d 1073, 1081 (Fla. 2008) ("A departure from the essential requirements of law is not mere legal error, but instead, involves a gross miscarriage of justice. . . . These standards govern the process of a district court of appeal in certiorari review of an order on a petition for writ of prohibition in this context to ensure that such review will neither function like nor actually be a second appeal." (internal citations and quotation marks omitted)).